

# STATE OF ILLINOIS

## DEPARTMENT OF INSURANCE



IN THE MATTER OF THE  
REVOCATION OF LICENSING  
AUTHORITY OF:

HEARING NO. 14-HR-0619

GEMA FLEITES

And

PROFESSIONAL INSURANCE SERVICE, INC.

### ORDER

I, Anne Melissa Dowling, Acting Director of the Illinois Department of Insurance, hereby certify that I have read the Record in this matter and the hereto attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Helen Kim, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter and that I have carefully considered the Record of the Hearing and the Findings of Fact, and Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made a part hereof.

I, Anne Melissa Dowling, Acting Director of the Illinois Department of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Article XXIV and Article XXXI of the Illinois Insurance Code (215 ILCS 5/401 *et seq.* and 215 ILCS 5/500-5 *et seq.*) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 *et seq.*).

This Order is a Final Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1 *et seq.*). Parties to the proceeding may petition the Acting Director of Insurance for a Rehearing or to Reopen the Hearing pursuant to 50 Ill. Adm. Code 2402.280. Appeal of this Order is governed by the Illinois Administrative Review Law (735 ILCS 5/3-101 *et seq.*).

**NOW IT IS THEREFORE ORDERED THAT:**

- 1) The Illinois insurance producer license of the Respondent, Gema Fleites, and the business entity license of Professional Insurance Service Inc., is suspended for a period of one (1) year;
- 2) The Respondent, Gema Fleites, individually and on behalf of Professional Insurance Service Inc., shall pay, within 35 days of the date of this Order, a civil penalty in the amount of \$5,000.00 directly to the Illinois Department of Insurance, 320 W. Washington, 4th Floor, Springfield, Illinois 62767; and
- 3) The Respondent, Gema Fleites, individually and on behalf of Professional Insurance Service Inc., shall pay, within 35 days of the date of this Order as costs of this proceeding, the sum of \$1403.00 directly to the Illinois Department of Insurance, 320 W. Washington, 4th Floor, Springfield, Illinois 62767.

DEPARTMENT OF INSURANCE  
of the State of Illinois

Date: August 3, 2015

Anne Melissa Dowling  
Anne Melissa Dowling  
Acting Director



# STATE OF ILLINOIS

## DEPARTMENT OF INSURANCE



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REVOCATION OF LICENSING  
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PROFESSIONAL INSURANCE SERVICE, INC.

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes Helen Kim, Hearing Officer, in the above-captioned matter and hereby offers her Findings of Fact, Conclusions of Law and Recommendations to the Acting Director of Insurance.

### FINDINGS OF FACT

#### **PROCEDURAL DOCUMENTS AND THE EVIDENCE**

- 1) On May 12, 2014, the former Illinois Director of Insurance, Andrew Boron ("Director"), issued an Amended Order of Revocation<sup>1</sup>, revoking the Illinois Insurance Producer license of Gema Fleites ("Respondent") and Professional Insurance Service, Inc. ("PISI") (collectively "Respondents"). (Hearing Officer Exhibit #2A)
- 2) On or about May 29, 2014, the Illinois Department of Insurance ("Department") received a Request for Hearing from Attorney Mark Goodman of Freeborn & Peters, LLP, on behalf of the Respondents. (Hearing Officer Exhibit #2B)

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<sup>1</sup> This supersedes the Order of Revocation issued on April 12, 2013.

- 3) On September 19, 2014, the Director issued a Notice of Hearing in this matter setting an original Hearing date and location of October 12, 2014 at the Department's Offices in Chicago, Illinois. (Hearing Officer Exhibit #2)
- 4) Ms. Barbara Delano and Mr. Fred Moore filed Notice of Appearances as Counsel in this proceeding on behalf of the Department. (Hearing Officer Exhibit #2)
- 5) On September 19, 2014, the Director issued an Order giving authority to Helen Kim to act as Hearing Officer in this proceeding. (Hearing Officer Exhibit #1)
- 6) Attorney Matthew Campobasso of Freeborn & Peters, LLP, filed an additional Notice of Appearance on behalf of the Respondents. (Hearing Officer Exhibit #4)
- 7) On or about September 24, 2014, the Respondents filed a Request for Extension of Hearing Date. (Hearing Officer Exhibit #3)
- 8) On October 7, 2014, an Order was issued by the Hearing Officer granting the Respondents' Request for Extension of Hearing Date and further setting the matter for December 3, 2014. (Hearing Officer Exhibit #5)
- 9) On or about November 19, 2014, the Respondents filed a Request to Produce. (Hearing Officer Exhibit #6)
- 10) On or about November 24, 2014, the Department filed its Response to [Respondents'] Request to Produce. (Hearing Officer Exhibit #7)
- 11) On March December 3, 2014, an Order was issued by the Hearing Officer granting the Respondents' Request to Produce subject to limitations and further rescheduling the matter for February 4, 2014. (Hearing Officer Exhibit #8)
- 12) On December 19, 2014, Mr. Martin McGrory, filed an additional Notice of Appearance as Counsel for the Department. (Hearing Officer Exhibit #9)
- 13) On January 14, 2015, an Order was issued by the Hearing Officer per her own motion and continued this matter for February 19, 2015. (Hearing Officer Exhibit #10)
- 14) On or about January 27, 2015, the Respondents filed a Request for Extension of Hearing Date. (Hearing Officer Exhibit #11)
- 15) On January 28, 2015, an Order was issued by the Hearing Officer granting the Respondents' Request for Extension of Hearing Date and scheduling this matter for March 2, 2015. (Hearing Officer Exhibit #12)
- 16) The Hearing was convened on March 2, 2015 at 10:00 a.m. at the Department's Chicago offices at which time were present Helen Kim, Hearing Officer; Barbara Delano and Martin McGrory representing the Department; Gema Fleites, Respondent and on behalf

of PISI; Attorneys Mark Goodman and Matt Campobasso, representing the Respondents; and Richard Nitka with the Department.

- 17) The purpose of the proceeding was to determine the Respondents' eligibility to hold an Illinois Insurance Producer license and business entity license and to determine whether the Director's Order of Revocation, dated May 12, 2014, revoking said licenses should stand.
- 18) The Department entered into the Record a Final Order previously issued in Hearing No. 13 HR 0265 on February 19, 2014, in the Matter of American Fire & Casualty Insurance Company, N.V., Eulogio Fleites, Gema Fleites and Roberto Padron. (Department Exhibit #1)
- 19) The Department entered evidence which was introduced in a previously held matter regarding Hearing No. 13 HR 0265. (Department Exhibits #2A-G)
- 20) Richard Nitka, testified in this matter as follows (R. 21-79):
  - a) He has worked for the Department for almost 30 years. His current title is supervisor of the producer regulatory unit and he has been in this role since 2001. Prior to that he was an investigator from 1985-2001;
  - b) His unit regulates insurance agencies and licensees and also reviews case files on complaints, conducts examinations, etc. He is familiar with their investigation and examination procedures. His duties include reviewing case files, assigning cases that come to his attention and making recommendations regarding action taken against producers and business entities;
  - c) He reviewed the Respondents' file before assigning this to Shanise Stewart [hereinafter "Stewart"], who was one of the four investigators he supervised at the time of the Respondents' investigation. Stewart is no longer employed with the Department, but he worked with her on this case;
  - d) This case was opened in December 2012 based on allegations contained in a consumer complaint from [Bradley] Birge;
  - e) He, Stewart and Department investigator Ron Masino [hereinafter "Masino"], and two workers' comp fraud investigators, went to the Respondents' office (PISI) on January 9, 2013 for a "no-knock," which is a surprise visit and conducted when there are strong allegations from a complainant. PISI is located at 3524 W. Peterson Avenue, Chicago. At the time they were under the impression that PISI was writing business for an unauthorized company named "American Fire and Casualty, N.V.";

- f) When they arrived for no-knock visit around 9:30 a.m., the receptionist was the only one there and she called the Respondent to come in which took about a half hour;
- g) Marcy Savage, Acting Assistant Deputy Director of the corporate regulatory section at the time, wrote a letter to Bradley Daniel Birge, dated January 18, 2013, indicating that the Department did not have a record of “American Fire and Casualty, N.V.” as an authorized insurance company in Illinois (Department Exhibit #2A);
- h) They received a letter from the Nevada Department of Insurance which stated that American Fire and Casualty Insurance, NAIC No. 24066, is domiciled in Ohio and authorized or licensed in Nevada to write property and casualty insurance and that this company received a certificate of authority in Nevada on November 23, 1999. It also indicated that “American Fire and Casualty Insurance Company, N.V.” has never been authorized or licensed in Nevada and that there are no variations of the name in their database or in that of the NAIC (Department Exhibit #2B);
- i) Liberty Mutual sent a letter, dated February 6, 2014, to James Stephens, [at the time] Deputy Director of the property and casualty compliance unit stating they had no record of PISI being authorized to produce or bind policies on behalf of Liberty Mutual, specifically American Fire and Casualty Insurance and Founders Insurance, and that the policy numbers are not those that would be generated by the aforementioned; (R. 31)
- j) A certificate dated March 22, 2011, lists the insured as Illinois Concrete, the producer as PISI located at 3525 W. Peterson Avenue, Chicago, Illinois and the insurance company providing coverage as “American Fire and Casualty” (Department Exhibit #2C<sup>2</sup>). “American Fire and Casualty” is a subsidiary of Liberty Mutual. [In total] fourteen certificates of liability insurance list the insurance company providing coverage as “American Fire and Casualty” (Department Exhibit #2C<sup>3</sup>);
- k) The renewal application for PISI, submitted June 1, 2012, provides a DRLP history report. A DRLP refers to designated registered licensed producer and someone who is responsible for the day to day actions of the insurance agency or the business entity (R. 36). An agency can have more than one DRLP and the information reflects that Eulogio Fleites became an authorized member on September 28, 1987. At one point the Respondent was the authorized member of PISI, but she was terminated on September 4, 1991, reappointed and became the authorized member on February 27, 2012, the day Eulogio Fleites was terminated (Department Exhibit #2D). The [term “migration”] indicates that the old database was migrated with the new one;

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<sup>2</sup> Bates stamp 220

<sup>3</sup> Bates stamp 220-228, 231, 233, 235 and 236

- l) Licenses are renewed every two years and the renewal applications for Eulogio Fleites for the years 2000, 2002, 2004, 2006, 2008, 2010 and 2012 reflect a working address of 3525 W. Peterson Avenue, Suite 601, Chicago, Illinois (Department Exhibit #2E);
- m) The license renewal applications for the Respondent dated July 25, 2005, and August 7, 2008, reflect a working address of 3525 W. Peterson Avenue, Suite 601, Chicago, Illinois (Department Exhibits #2F and #2G);
- n) In the course of supervising the investigation he received<sup>4</sup> bank documents regarding the Respondents' account (*see* Department Exhibit #2G). "American Fire and Casualty Company, NV" is listed on a [business account agreement form<sup>5</sup>] with an address of 2533 N. Carson St., Suite 2283, Carson City, NV, on an updated business signature card form<sup>6</sup> from Charter One with an address of 3525 W. Peterson Avenue, Suite 601, Chicago, Illinois, account number ending in 0132 with the signer of the account reflected as Roberto Padron. Forty Seven (47) checks were drawn from the account of "PISI, Premium Fund Trust Account" with an address of 3525 W. Peterson Avenue, Suite 601, Chicago, Illinois and made payable to "American Fire and Casualty" and reflecting "deposit only American Fire and Casualty" and deposited into account ending in 0132. Check number 2211<sup>7</sup>, dated September 30, 2005, is drawn from the PISI account ending in 8609, made payable to "American Fire and Casualty" for \$1,000 and was deposited into "American Fire and Casualty" account ending in 0132. The [47] checks are as follows: #2211; #2234<sup>8</sup>, #2246<sup>9</sup>, #2260<sup>10</sup>, #2277<sup>11</sup>, #2282<sup>12</sup>, #2296<sup>13</sup>, #2312<sup>14</sup>, #2326<sup>15</sup>, #2331<sup>16</sup>, #2365<sup>17</sup>, #2393<sup>18</sup>, #2418<sup>19</sup>, #2431<sup>20</sup>, #2450<sup>21</sup>, #2456<sup>22</sup>, #2471<sup>23</sup>, #2479<sup>24</sup>, #2501<sup>25</sup>, #2510<sup>26</sup>, #2550<sup>27</sup>, #2552<sup>28</sup>, #2573<sup>29</sup>, #2592<sup>30</sup>,

<sup>4</sup> These documents were provided by Bradley Birge and obtained pursuant to subpoena.

<sup>5</sup> Department Exhibit #2G, bates stamp 1261

<sup>6</sup> Department Exhibit #2G, bates stamp 1262

<sup>7</sup> Department Exhibit #2G, bates stamp 1292

<sup>8</sup> Dated 11/10/2005 in amount of \$15,694.20 (Department Exhibit #2G, bates stamp 1296)

<sup>9</sup> Dated 12/6/05 in amount of \$13, 913.60 (Department Exhibit #2G, bates stamp 1298)

<sup>10</sup> Dated 12/27/2005 in the amount of \$9,283.20 (Department Exhibit #2G, bates stamp 1300)

<sup>11</sup> Dated 1/24/06 in the amount of \$6,640.00 (Department Exhibit #2G, bates stamp 1302)

<sup>12</sup> Dated 2/24/06 in the amount of \$19,936.80 (Department Exhibit #2G, bates stamp 1304)

<sup>13</sup> Dated 3/22/06 in the amount of \$22,836.80 (Department Exhibit #2G, bates stamp 1306)

<sup>14</sup> Dated 4/28/06 in the amount of \$28,559.20 (Department Exhibit #2G, bates stamp 1310)

<sup>15</sup> Dated 5/31/06 in the amount of \$21,352.80 (Department Exhibit #2G, bates stamp 1311)

<sup>16</sup> Dated 6/27/06 in the amount of \$15,963.20 (Department Exhibit #2G, bates stamp 1313)

<sup>17</sup> Dated 8/23/06 in the amount of \$35,820.80 (Department Exhibit #2G, bates stamp 1315)

<sup>18</sup> Dated 9/22/06 in the amount of \$12,006.40 (Department Exhibit #2G, bates stamp 1317)

<sup>19</sup> Dated 11/22/06 in the amount of \$27,616.80 (Department Exhibit #2G, bates stamp 1319)

<sup>20</sup> Dated 12/18/06 in the amount of \$28,000.80 (Department Exhibit #2G, bates stamp 1321)

<sup>21</sup> Dated 2/2/07 in the amount of \$7212.80 (Department Exhibit #2G, bates stamp 1323)

<sup>22</sup> Dated 3/3/07 in the amount of \$37,566.40 (Department Exhibit #2G, bates stamp 1325)

<sup>23</sup> Dated 3/22/07 in the amount of \$18,316.00 (Department Exhibit #2G, bates stamp 1327)

<sup>24</sup> Dated 4/20/07 in the amount of \$7,879.20 (Department Exhibit #2G, bates stamp 1330)

<sup>25</sup> Dated 6/22/07 in the amount of \$4,324.00 (Department Exhibit #2G, bates stamp 1332)

<sup>26</sup> Dated in 6/26/07 in the amount of \$16,875.20 (Department Exhibit #2G, bates stamp 1334)

<sup>27</sup> Dated 9/21/07 in the amount of \$38,115.20 (Department Exhibit #2G, bates stamp 1336)

#2603<sup>31</sup>, #2626<sup>32</sup>, #2642<sup>33</sup>, #2661<sup>34</sup>, #2673<sup>35</sup>, #2689<sup>36</sup>, #2699<sup>37</sup>, #2718<sup>38</sup>, #2731<sup>39</sup>, #2762<sup>40</sup>, #3516<sup>41</sup>, #3541<sup>42</sup>, #3547<sup>43</sup>, #3560<sup>44</sup>, #3603<sup>45</sup>, #3634<sup>46</sup>, #3661<sup>47</sup>, #3676<sup>48</sup>, #3701<sup>49</sup>, #3749<sup>50</sup>, #3784<sup>51</sup>, #3810<sup>52</sup>, and #3959<sup>53</sup>; (R. 43-51)

- o) You cannot place insurance business through an insurance company that you do not have a contract with or that is not licensed with the State of Illinois;
- p) Checks written by a business entity to a company that had no authority to do business with would be considered an improper disbursement or improper withdrawal if there are no supporting documents for the checks. He asked the Respondent for supporting documentation with respect to the checks made out to American Fire and Casualty N.V., such as Check No. 2211<sup>54</sup>, and she indicated she did not have them. The Respondent or anyone acting on behalf of PSI did not at any time provide documents to the support the previously aforementioned 47 checks;
- q) The Respondent did not provide statements that were referenced in the following [8] checks for payment to "American Fire and Casualty": (1) #3516 dated April 21, 2009, in the amount of \$6,208.80; (2) #3541 dated May 27, 2009, in the amount for \$17,236.80; (3) #3547 [dated June 8, 2009] in the amount of \$18,790.40; (4) #3560, July 8, 2009, in the amount of \$8,398.80; (5) #3661 dated February 4, 2010; (6) #3701 dated May 13, 2010, for \$15,151.20; (7) #3749 dated

<sup>28</sup> Dated 9/21/07 in the amount of \$12,671.20 (Department Exhibit #2G, bates stamp 1337)

<sup>29</sup> Dated 10/23/07 in the amount of \$22,620.00 (Department Exhibit #2G, bates stamp 1339)

<sup>30</sup> Dated 11/30/07 in the amount of \$18,949.60 (Department Exhibit #2G, bates stamp 1341)

<sup>31</sup> Dated 1/4/08 in the amount of \$13,088.40 (Department Exhibit #2G, bates stamp 1343)

<sup>32</sup> Dated 3/5/08 in the amount of \$18,074.40 (Department Exhibit #2G, bates stamp 1345)

<sup>33</sup> Dated 4/1/08 in the amount of \$2,183.20 (Department Exhibit #2G, bates stamp 1347)

<sup>34</sup> Dated 4/30/08 in the amount of \$9,378.40 (Department Exhibit #2G, bates stamp 1351)

<sup>35</sup> Dated 6/2/08 in the amount of \$6,977.60 (Department Exhibit #2G, bates stamp 1353)

<sup>36</sup> Dated 6/25/08 in the amount of \$14,836.00 (Department Exhibit #2G, bates stamp 1355)

<sup>37</sup> Dated 7/28/08 in the amount of \$19,533.00 (Department Exhibit #2G, bates stamp 1357)

<sup>38</sup> Dated 9/3/08 in the amount of \$7,844.80 (Department Exhibit #2G, bates stamp 1360)

<sup>39</sup> Dated 9/24/08 in the amount of \$12,354.40 (Department Exhibit #2G, bates stamp 1362)

<sup>40</sup> Dated 12/3/08 in the amount of \$19,288.80 (Department Exhibit #2G, bates stamp 1364)

<sup>41</sup> Dated 4/21/09 in the amount of \$6,208.80 (Department Exhibit #2G, bates stamp 1366)

<sup>42</sup> Dated 5/27/09 in the amount of \$17,236.80 (Department Exhibit #2G, bates stamp 1368)

<sup>43</sup> Dated 6/8/09 in the amount of \$18,790.40 (Department Exhibit #2G, bates stamp 1370)

<sup>44</sup> Dated 7/8/09 in the amount of \$8,398.80 (Department Exhibit #2G, bates stamp 1373)

<sup>45</sup> Dated 9/28/09 in the amount of \$6,218.40 (Department Exhibit #2G, bates stamp 1375)

<sup>46</sup> Dated 11/29/09 in the amount of \$23,572.80 (Department Exhibit #2G, bates stamp 1377)

<sup>47</sup> Dated 2/4/10 in the amount of \$33,720.08 (Department Exhibit #2G, bates stamp 1380)

<sup>48</sup> Dated 3/4/10 in the amount of \$7,114.40 (Department Exhibit #2G, bates stamp 1391)

<sup>49</sup> Dated 5/13/10 in the amount of \$15,151.20 (Department Exhibit #2G, bates stamp 1393)

<sup>50</sup> Dated 9/3/10 in the amount of \$9,738.50 (Department Exhibit #2G, bates stamp 1395)

<sup>51</sup> Dated 11/17/10 in the amount of \$9,738.50 (Department Exhibit #2G, bates stamp 1397)

<sup>52</sup> Dated 1/13/11 in the amount of \$44,769.60 (Department Exhibit #2G, bates stamp 1399)

<sup>53</sup> Dated 1/4/12 in the amount of \$20,326.54 (Department Exhibit #2G, bates stamp 1404)

<sup>54</sup> Check #2211 reflects payment to "American Fire and Casualty" and which Department counsel appeared to be referring to during examination of witness as part of checks contained in Department Exhibit #2G, however witness responded "it was the checks made out to American Fire and Casualty, N.V...."

September 3, 2010, for \$9,738.50; and (8) #3810 dated January 13, 2011, in the amount of \$44,769.60 (*see* Department Exhibit #2G<sup>55</sup>);

- r) His investigators asked the Respondent to provide files for two clients, but she did not produce them. Pursuant to Section 3113, you have to maintain books and records for a total of seven years;
  - s) He was present January 9, 2013, when the Respondent was asked to provide the cash receipt register, which is a register that producers and business entities have to maintain, listing all payments being taken in by the insurance agency, [such as] cash, credit cards, and checks;
  - t) In place of a cash receipt register the Respondent provided deposit slips which are not acceptable because it does not have all the information needed for a cash receipt register, such as the consumer's name, amount collected, the insurance company and other info as [set forth] in Section 3113. Not maintaining a cash receipts register is a violation of the Illinois Administrative Code;
  - u) A PFTA is required to have the agency's name and the words "premium trust fund account" reflected on the bank statements and the checks. PISI's bank statements do not have [the required language] (Department Exhibit #3);
  - v) Although PISI's checks are properly designated, as a whole, the PFTA is not properly titled because the Illinois Administrative Code specifically states that the words "premium fund trust account" must be labeled on the checks and the bank statements (*see* Department Exhibit #2G);
  - w) With respect to the Department's allegations and exhibits entered at hearing, the Respondent was listed as producer at PISI; and
  - x) It is normal for an investigation to be initiated based on a consumer complaint.
- 21) On Cross Examination, Richard Nitka testified in this matter as follows (R. 79-155):
- a) He has been with the Department for almost 30 years and his current position is supervisor of the producer regulatory unit since 2001;
  - b) The Department has a Springfield office; he does not oversee all examinations of producers in Illinois, but is in charge of the Chicago examiners and investigators;
  - c) They do not keep track of the number of examinations with respect to the Chicago office each year. They have a 100 cases but not everything is an examination so there are probably less than 100 examinations a year, perhaps 50 examinations. And of those examinations there are very few that he will personally go out and stay involved in since he is mostly a supervisor;

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<sup>55</sup> Bates stamp 1366, 1368, 1370, 1373, 1380, 1393, 1395, and 1399 (R. 57-61)

- d) The examination of the Respondents took place on January 9, 2013, and since that time he has probably gone on one or two surprise visits of other companies. He will go out when he is told by his supervisor, who at the time was Michael Teer, but who is no longer with the unit. His supervisor now is Iris Canto;
- e) There were a total of five people at the investigation, investigator Masino, examiner Stewart, and two workers' comp fraud unit investigators, Brad Lucchini who is still with the Department and Felix, who left the Department about a year and a half ago, and perhaps also investigator Sara Jahn, but he is not sure;
- f) They did a no-knock due to a strong allegation in that they were under the impression that PISI was issuing checks to an unauthorized company based on a consumer complaint from Bradley Birge and it prompted an examination. He has never met or spoke with Mr. Birge, but knows that Mr. Birge came to the Department with a lot of records and talked to Masino;
- g) He made a decision to open an investigation and a file was opened in December 2012. Masino gave him the information he received from Birge prior to the holiday season. He believes about 3-4 weeks passed since Birge's initial complaint and the examination;
- h) He believes Masino contacted some insurance companies such as Liberty Mutual to independently verify Birge's allegations because he spoke with Masino about his communication with Liberty Mutual;
- i) On the day of the examination he drove separately and met the others at PISI. He arrived around 9:30 a.m. and it was just the receptionist. The Respondent arrived within a half hour after that. Mr. [Eulogio] Fleites was never there and he has never personally had a conversation with him. While at the office they went over a plan of action regarding what they would do in a routine exam;
- j) He probably had about 2-3 conversations with the Respondent, one of which was on January 9, 2013. When the Respondent arrived at the office they asked her certain questions, Masino asked her about her husband and she indicated that he hadn't worked [at PISI] for at least a couple of years;
- k) The examination took approximately 2 ½ to 3 ½ hours at most. He recalls the layout of the office to have a main office area and two other smaller offices;
- l) They asked the Respondent for some records and he got copies of bank statements and checks. The Respondent gave him copies of checks from the PFTA and he went into one of the smaller offices. At some point he also looked at some [banking] statements which he did back at the Department's offices;
- m) He does not recall if anyone on his team brought any materials with them. At the investigation anything they would have examined was furnished to them on that day by the Respondent;

- n) Allegation H relates to the allegation that the statements were not properly labeled. [Section] 3113.40 uses the term “bank records” which is the same as bank statements. The Charter One bank statements (*see* Department Group Exhibit #3) would qualify as “bank records” under the regulation;
- o) The account statement that bears an account number [ending in 3023] and reflects on the top of the [photocopied] checks, “Professional Insurance Services Inc., Premium Fund Trust Account” is not really an account statement even though that page states on the top, “commercial account statement” (*see* Department Exhibit #3<sup>56</sup>);
- p) He asked the Respondent for PFTA checks for the duration of a year but doesn’t recall the year. The Respondent provided quite a bit of checks, more than 100 but less than 500, and he recalls that the checks were in chronological order and were supposedly written from the PFTA, the Charter One account;
- q) The Respondent was cooperative with him and the rest of the team;
- r) He asked for the checks, which the Respondent provided, to see how many were written to “American Fire and Casualty, N.V.”, because they were under the impression that the [Respondents] were writing checks to the unauthorized company from that account;
- s) He believes Stewart asked to look at checks for other years;
- t) He believes he asked the Respondent what kind of company [American Fire and Casualty, N.V.] was and she indicated it was a consulting firm;
- u) He asked for any supporting documents that she might have for the checks and she did not have any;
- v) It was his understanding that the Respondents were trying to place business with “American Fire and Casualty, N.V.” based on Mr. Birge’s representation to Masino, but he did not personally undertake any independent investigation;
- w) They found approximately 35 checks related to “American Fire and Casualty, N.V.” and he prepared a chart reflecting the check number, amount, date and to who it was paid to. He asked the Respondent if she had any back up documents in general for the checks written to American Fire and Casualty, N.V., but did not show her the specific checks and without looking at them the Respondent indicated that she did not have anything. His job was done after he went through the 100 to 500 checks [for the purpose of ] pulling out any checks that related to American Fire and Casualty [N.V.] at which point he remained in the conference room and was not privy to what was going on in the other room. He remained for the entire investigation which took around 2 ½ to 3 ½ hours;

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<sup>56</sup> Bates stamp 928

- x) He did not ask the Respondent for any other checks;
- y) He prepared handwritten notes with respect to the chart which he gave to Stewart who typed it into a spreadsheet. He does not know what happened to his original notes;
- z) He reviewed the entire file when they routed it to legal which was two years ago and shortly after the examination. He does not recall what was in the file;
- aa) He does not recall exactly how many documents Stewart took with her after the examination, but it could have been three boxes;
- bb) When the file was complete he made sure that there was supporting documents for every allegation;
- cc) He will tweak an order a little if there is anything wrong, but he does not recall if he made any changes to Stewart's initial order of revocation, but it is possible. It is common practice to make grammatical and/or factual changes and it is possible that Stewart's draft may have had some inaccurate statements;
- dd) [Although] he had only looked at the checks, he felt he was in a position to correct factual inaccuracies of [Stewart];
- ee) In this matter the business entity is PISI and the licensee is the Respondent. With respect to Allegation A in the order of revocation, a company must be licensed and if they are not, the [licensee] is liable for anything that happens. To his knowledge there are no exceptions which he would be aware of since he has been doing this for 30 years;
- ff) Based on Mr. Birge's complaint and documents in the file, he believes there are two instances where the Respondents were unable to satisfy its obligation as an insurer. It involved two companies that filed claims and because there was no insurance, he believes PISI would have had to pay a portion of the claims [because American Fire and Casualty, N.V. could not]. He does not know the dollar amounts of the claims;
- gg) He approved the language regarding Allegation B. There were several consumers involved but he does not know the names offhand. There were checks from the PFTA made out to "American Fire and Casualty, N.V." and "American Fire and Casualty." The checks from PISI to American Fire and Casualty misled consumers because [the Respondents] are transacting business on behalf of consumers to American Fire and Casualty. One consumer or insured shown on the certificates of liability is the City of Chicago and the name of insurance company was American Fire and Casualty, N.V., or American Fire and Casualty;

- hh) Another misled consumer is Illinois Concrete, but he does not know who owns Illinois Concrete nor did he talk to anyone from Illinois Concrete. He cannot be sure that Illinois Concrete ever felt misled (R. 123);
- ii) He did not speak to anyone at the City of Chicago or recall seeing any other documents other than the insurance certificates that related to the City of Chicago (R. 124);
- jj) With respect to Allegation C, a producer who collects premium from an insured has an obligation to forward that premium to the insurer, which is an insurance company's policy, and the timeframe is usually 45 days, but it depends on the company. [The producer is also] obligated under Illinois regulations to forward that money to the insurer or otherwise it would be considered improperly withholding monies;
- kk) He asked the Respondent for supporting documentation on some [of the checks] and she indicated that she did not have anything. He cannot recall if all 25 checks referenced in Allegation D were included in the ones he reviewed at the examination on January 9<sup>th</sup>, but he is sure that some of them were. He believes that others asked the Respondent for supporting documentation because if they were provided they would not have been cited;
- ll) He recalls pulling approximately 35 checks and although 25 were cited in the allegation, it is not possible that supporting documentation was provided. For example supporting documentation for a \$10,000 check written to an insurance company would be documents which would reflect the consumers' names plus all their premiums;
- mm) When he asked the Respondent for supporting documentation he did not explain what he meant nor did she ask, the Respondent only indicated that she did not have them. Some agencies do not keep good records;
- nn) He does not see any checks with respect to the date in the allegation, January 10, 2013. They would not have just put any date, however it is possible that the date was entered incorrectly;
- oo) He is familiar with Section 3113.40 and there is nothing in subsection (h) that says a producer cannot pay a premium to an unlicensed insurer out of the PFTA;
- pp) He does not believe that he or Stewart contacted the Respondent after conducting the examination to inform her that they were looking for more documents. The agency is supposed to keep records at their agency and if they don't have it, they don't have it. However there have been instances where the Department would ask for more documents after an examination which he agrees is to give a licensee an opportunity to show what they have;
- qq) Check #3959 is the last check in Department Group Exhibit #2G and dated January 4, 2012, and the memo line is blank. He would agree that this check

would not relate to Allegation E to reflect that it was a payment for an insurer statement, but believes that it was for that purpose (R. 137). [However, he agrees] there is nothing on the check that states that payment was for a statement so it could have been for payment of premiums;

- rr) The file regarding Consumer 1 [referenced in Allegation E] was requested but the Respondent could not provide it;
- ss) He testified earlier that there were some claims brought where PISI had to satisfy the losses. Princess Foods was a consumer, but he does not recall if it was Consumer 1 or 2. He did not ask the Respondent about Consumer 1 or Consumer 2, but believes Stewart did;
- tt) He is familiar with 3113.50(c) which requires that a producer must maintain records for 7 years. It does not say what records they are, but it is usually the PFTA records; it also includes consumer files, which is based on his 30 years of experience and what he was taught at the Department. He did not inform the Respondent that this section included consumer files; a licensee should be aware of what it means by having access to the [provisions] and he feels that it is reasonable for a licensee to rely [on those provisions] that the legislature enacted;
- uu) William Welch from Liberty Mutual sent a letter to [James] Stephens which was included in the file (Department Exhibit #2C). He does not know Mr. Welch nor has he talked to him. He believes on one occasion he spoke with Mr. Stephens about the letter but he does not recall the substance;
- vv) With respect to a [certificate of liability insurance] in Department Exhibit #2C<sup>57</sup>, it indicates that the insurer affording coverage is "American Fire and Casualty" and Insurer B is listed as Liberty Mutual which is for workers' compensation coverage. Masino advised him that he had contacted Liberty Mutual. It is unclear from the certificate whether the insurer affording coverage is referring to the one owned by Liberty Mutual or the unauthorized American Fire and Casualty, N.V. The assumption was made that the insurer was the Liberty Mutual affiliate but during the course of the investigation they became aware of American Fire and Casualty, N.V.;
- ww) With respect to the 13 certificates which reflect the insurer as American Fire and Casualty, it is possible that the certificates are for American Fire and Casualty, N.V., however, they are an unauthorized company and unlicensed to do business in Illinois. He does not believe that American Fire and Casualty, N.V. is licensed to be an insurer anywhere else; he knows that they are not licensed in Nevada;
- xx) NV is the abbreviation for Nevada. Generally when you abbreviate a state [it does not include periods] and it is possible that "N.V." does not refer to Nevada, but he does not know;

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<sup>57</sup> Bates stamp 1220

- yy) Anything is possible, “American Fire and Casualty, N.V.” may be authorized as an insurer elsewhere, but he does not know; and
  - zz) He was in the other room reviewing checks when Stewart requested a cash receipt register. Stewart received some documentation such as the bank statements and the deposit slips. The deposit slips are not cash receipts registers, it only showed the amount of money collected and maybe the consumer’s name, a cash receipt register must include the amount collected, insurance company, a binder or some sort of identification number, purpose of which is for tracking money.
- 22) On Re-Direct Examination, Richard Nitka testified in this matter as follows (R. 156-164):
- a) He and his team gathered a lot of documents and information on January 9, 2013, and they continued to receive more documents afterward such as bank statements which covered an additional year (*see* Department Group Exhibit #3);
  - b) He will review [orders] of revocation and make changes where necessary. He reviewed the order of revocation at issue and he felt it was accurate;
  - c) The policy for Illinois Concrete, Incorporated was written by PISI and the insurer providing coverage was “American Fire and Casualty” (*see* Department Exhibit #2C<sup>58</sup>). American Fire and Casualty is affiliated with Liberty Mutual and PISI is not authorized to sell insurance on their behalf. PISI was selling insurance on behalf of American Fire and Casualty, N.V., the name of which does not appear on the [certificate];
  - d) Illinois Concrete is also listed as the insured on other [certificates<sup>59</sup>]. He did not speak with anyone from Illinois Concrete;
  - e) An endorsement page for the City of Chicago modifies the insurance for their commercial general liability coverage and on another certificate it lists Brad Construction as the insured (*see* Department Exhibit #2C<sup>60</sup>). [These certificates] purport to provide insurance through “American Fire and Casualty”;
  - f) The policy numbers on [the certificates of insurance] are not ones that would be generated by American Fire and Casualty Insurance [or] Founders Insurance. Liberty Mutual could not offer any explanation; and
  - g) If the “N.V.” was forgotten to be included and American Fire and Casualty, N.V. was providing coverage, it [still] would not be appropriate because they are not authorized to do business in the State of Illinois.

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<sup>58</sup> Bate stamp 1220

<sup>59</sup> Department Exhibit #2C, bate stamp 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1233, 1235, and 1237.

<sup>60</sup> Bates stamp 1229 and 1231

- 23) On Re-Cross Examination, Richard Nitka testified that after the Department received the February 13, 2013 letter from Liberty Mutual (*see* Department Exhibit #2C) he did not personally call PISI or the Respondent to ask why the [policy] numbers did not match. (R. 164)
- 24) On Examination by the Hearing Officer, Richard Nitka testified in this matter as follows (R. 165-168):
- a) He believes the Respondents had two PFTAs with Charter One. There were two account numbers and one was called “commercial;”
  - b) Certificate holder means that the insured has to provide the certificate of liability to whomever they are doing work for; and
  - c) With respect to Allegation D regarding unlawful withdrawals, Section 3113.40(h) provides six examples of lawful withdrawals, and the only ones that can be made. Anything outside of that is considered unlawful, for example check number 2211 (*see* Department Exhibit #2G<sup>61</sup>) is considered unlawful because there were no supporting documents for the check making it an improper disbursement. The type of supporting documentation he was looking for was names of consumers that covered the check, the amount of premiums and anything “that concludes to be \$1,000.00;” and
  - d) It is also considered unlawful because it was payable to an unauthorized insurer company and even if it was for the Liberty Mutual company, the [Respondents] do not have authority to do business with them.
- 25) On additional Re-Cross Examination, Richard Nitka testified in this matter as follows (R. 169-171):
- a) Two accounts are referred to in the Charter One statement (Department Exhibit #3), one identified as TCB Premier Checking, account ending in 3023 and another identified as Business Green Checking, account ending in 5524. Check #1233 (Department Exhibit #3<sup>62</sup>) bears the name “Professional Insurance Services, Inc., Operating Account” and which ends in 5524 and not a PFTA; and
  - b) The Respondents only have one PFTA and one operating account.
- 26) The Respondent, Gema Fleites, testified in this matter as follows (R. 189-223):
- a) She has been married to her husband, Eulogio Fleites, for 28 years and they have four sons, ages 16 through 26. She currently resides in Lincolnwood, Illinois;
  - b) She graduated from Loyola University in 1990 with a degree in communications;

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<sup>61</sup> Bates stamp 1292

<sup>62</sup> Bates stamp 930

- c) She and her husband started PISI in 1987 and she continued working there full time after graduating. During college her duties at PISI involved answering the phone and filing. She also did personal auto and homeowners insurance because she was licensed in 1987. After she graduated she had more responsibilities which included doing some commercial insurance;
- d) She is part owner of PISI and held the title of president since February 2012. She is also [currently] the designated licensee for PISI. Prior to that her husband was the designated licensee;
- e) She is pretty sure that she was not the designated licensee prior to taking over in February 2012 and that the first time she became designated licensee was in February 2012;
- f) PISI is an agency writing mostly commercial insurance and includes trucking, hotels, and motels but they also do personal lines such as auto and homeowners. She also does a little bit of health insurance with Blue Cross Blue Shield;
- g) When she and her husband started PISI in 1987, her husband ran the show while she was in school. During the 1990s she had kids and being a mom became a full time job so she was only in the office maybe 2-3 hours every day. As the kids got older in the 2000s she spent less time in the office because of the kids, but she always had a part at PISI doing things such as filing or any kind of accounting work or paying bills, providing support to her husband; (R. 193)
- h) In 2009 she returned to work full time due to her husband's health. Her husband contracted Hepatitis C when he was 19 years old from a blood transfusion but they did not find out about it until 1994. Her husband was doing a lot of trials and had various chemotherapy treatments which were unsuccessful and caused him to be in bed for very long periods of time. As a result she had to go to PISI every day. Her day to day responsibilities involved coming in the morning and returning messages from clients, selling insurance and anything else that needed to be done. Her husband was involved in the company but on a very, very limited basis; (R. 195)
- i) Last year their bank, Charter One was bought out by U.S. Bank, which is now their current bank;
- j) At the examination deposit slip books for the PFTA were provided to the Department. For example a page from the deposit slip book dated October 22, 2012, reflects the amount of \$29,244.00 (Respondent Exhibit #1) and an example of the type of deposit ticket they have used at PISI over the years. They would make deposits at least once a week and receive a slip entitled "customer receipt" (Respondent Exhibit #1). On the back of the customer receipt are the six entries totaling the [deposited amount]. The first entry is for Alsip Hospitality in the

amount of \$6,080.00 (Respondent Exhibit #1). And for each of the entries they would have the underlying documentation relating to the deposit which would be an invoice showing the policy it was paid on and also reflect a policy number. The receipt book is kept at their offices in one of her desks and if one of the examiners had asked her to see supporting documentation for the premium deposit she would have opened the file and showed it to them;

- k) She remembers January 9, 2013 very well as she received a call from her assistant Gloria around 9:30 a.m. telling her that there were seven people from the Department with a warrant, so she raced to the office from home and got there in about 10 minutes. When she arrived to the office she believes there were about 6-7 people there. She recalls dealing with Stewart and Masino. She recalls Nitka being there, but does not recall having any conversations with him. When she arrived, Nitka, Masino and Stewart gave her their business cards. [Per Stewart's request] she provided the PFTA and is pretty sure she also gave Stewart their operating book. Stewart asked for QuickBooks or accounting software but she told them they did everything manually. Stewart asked for cash receipts and she provided her with the deposit slips and when she was asked if she had anything else, she told Stewart that all the deposits list the names of the insureds, the dates and the amounts on the back. She also provided her statements and Stewart took all the information and went into the conference room where she believes Nitka and two other gentlemen were;
- l) Masino and a couple of other gentleman were in the filing room area. Masino asked her where her husband was, continuously asked who the owner of Illinois Concrete was and whether they worked out of the office and she was taken aback by that. [Masino] also asked her who owned Brad Contractors but she did not know who they were. She answered the questions as best as she could;
- m) She believes the examination was about 1 ½ to 2 hours and during that time she did not tell them they could not go into any other part of the office. There were no documents which were asked for and which she indicated she did not have;
- n) No one from the Department handed her any specific checks and asked for supporting documentation relating to such check;
- o) Stewart did not take anything out of the deposit ticket book or ask for a file relating to Alsip Hospitality (*see* Respondent Exhibit #1);
- p) There were no requests for information or documentation that the Department wanted to see that she refused;
- q) Gloria was not involved in the investigation and her husband did not show up at any time. No one else was employed by PISI other than herself and Gloria and all requests came to her directly and she gave anything that was asked for;

- r) She recalls Nitka's testimony about him asking her for documents relating to checks written by American Fire and Casualty, but she does not recall ever speaking to him or Nitka speaking to her;
- s) She does not recall Stewart or anybody else from the Department asking her for anything relating to specific checks written to "American Fire and Casualty" nor does she recall any general requests that were made;
- t) She does recall that Masino asked her for two specific files, one was for Illinois Concrete and the other was Brad Contractors, which she provided. Masino instructed the other two gentlemen to look through the whole cabinets and the other gentleman confirmed with Masino that they were just looking for something that said "American Fire and Casualty." She was in the office the whole time but did get up a few times;
- u) Towards the end of the examination Stewart asked her to write down her operations and procedures and sign it but she indicated that she was uncomfortable signing anything without having her attorney review it. Stewart wanted to document everything she was taking because it would take too long to photocopy things so they spent time inventorying the things that she took and she signed for the items that were taken;
- v) After the examination she did not receive any oral or written requests for supplemental documentation on anything. The next time she heard from the Department was when she received the order of revocation;
- w) At varying points she was less involved than her husband and sometimes he was less involved than her depending on family, family or health issues;
- x) She and her husband maintained different accounts and customers, however if her husband's customer called and he was not in she would answer the question or take a message;
- y) She is familiar with the name America Fire and Casualty, which she knows it to be as American Fire and Casualty, N.V. (R. 212);
- z) "American Fire and Casualty" is a surplus lines company and she became acquainted with the company through Shankar Chaudhari [hereinafter "Chaudhari"] sometime in 2006 or 2007;
- aa) She did not have any involvement with "American Fire and Casualty, N.V.";
- bb) A general power of attorney was given to Shankar P. Chaudhari for "American Fire and Casualty Insurance Company, N.V." and in regards to such company stated that it was "a corporation organized and operating in the laws of Aruba and having its registered office at Vondellaan 6, Aruba, hereby makes, constitutes and

appoint Mr. Shankar P. Chaudhari to represent the latter corporation and operations outside Aruba, to sign on its behalf, to perform transactions, and in general to do everything deemed necessary, desirable or useful in pursuance of the corporation's objective which are to operate a fire and accident insurance company in the widest sense of the work..." (Respondent Exhibit #2). The power of attorney was in their file for Chaudhari because [PISI] office wrote the surplus line bond for him. Chaudhari was a surplus line broker whose office was located at PISI (R. 215);

- cc) She did not place any business with "American Fire and Casualty" but her husband did;
- dd) She never had any customers who told her that they felt misled relating to "American Fire and Casualty;"
- ee) Due to the business her husband placed with "American Fire and Casualty," PISI paid "American Fire and Casualty" from the PFTA when there was a statement due for "American Fire" which she would see from Chaudhari;
- ff) They do not maintain any records relating to "American Fire and Casualty;"
- gg) Chaudhari at one time shared office space, but he left in 2012. "American Fire and Casualty" does not share a business space with them, when Chaudhari left he took all of the business records for "American Fire and Casualty;"
- gg) Her signature is on [one of] the certificate of liability insurance contained in Department Exhibit #2C, bate stamp 1220, but it is not her signature on the others<sup>63</sup>;
- hh) Checks that were written by PISI to "American Fire and Casualty, N.V." would have been recorded in the file and include the name of the insured, policy number, et cetera. The Department took a copy of the deposit ticket book in the examination and a copy of the cash disbursements file records that showed money was being sent out;
- ii) U.S. Bank sends statement for PISI's operating account and PFTA (Respondent Exhibit #3);
- jj) She is familiar with the certificate of insurance [Department Exhibit #2C<sup>64</sup>] that lists Liberty Mutual under Insurer B, and which is a workers' compensation policy. The workers' compensation policy was written through her office (Respondent Exhibit #4); and

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<sup>63</sup> Department Exhibit #2C, bate stamp 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1231, 1233, 1235, 1236, 1237 and 1238

<sup>64</sup> Bates stamp 1231

- kk) She does not, through PISI, personally write business through Liberty Mutual, but through NCCI for workers' compensation.
- 27) On Cross Examination the Respondent, Gema Fleites, testified in this matter as follows (R. 223-242):
- a) She signed checks on behalf of PISI prior to becoming the designated licensed registered producer going back to maybe 2000. She has signed checks to "American Fire and Casualty"<sup>65</sup>;
  - b) Her husband was involved in "American Fire and Casualty, N.V.";
  - c) The insurance policies that she had previously testified to that PISI had placed with "American Fire and Casualty" was actually placed with "American Fire and Casualty, N.V." Each of those certificates states the insurer as "American Fire and Casualty" and not "American Fire and Casualty, N.V." She has never placed any policies with "American Fire and Casualty," the subsidiary of Liberty Mutual;
  - d) She shared an office with Chaudhari until 2012. Chaudhari was not a representative of PISI but he represented New York Life and was with "American Fire and Casualty, N.V.,"
  - e) The certificates of insurance<sup>66</sup> that she previously testified to stating that she did not sign were signed by her husband. Those policies were placed with "American Fire and Casualty, N.V.," however the certificates of insurance do not reflect "American Fire and Casualty, N.V." but lists as Insurer A, "American Fire and Casualty,"
  - f) It was her understanding that "American Fire and Casualty, N.V." was a surplus line company and that the policies were surplus lines policies, but she did not explain any of that to the Department investigators;
  - g) The Department never specifically asked her for documents relating to "American Fire and Casualty, N.V." She was asked about who had information about "American Fire and Casualty" (R. 227);
  - h) She never presented any information about a surplus lines company and never presented any policies related to the "American Fire and Casualty, N.V." policies;
  - i) She, her husband nor PISI kept a separate account of documentation relating to the business transacted regarding "American Fire and Casualty, N.V." and the

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<sup>65</sup> Department counsel clarified that when she is referring to "American Fire and Casualty" she is referring to "American Fire and Casualty, N.V." (R. 224)

<sup>66</sup> See Department Group Exhibit #2C, bates stamp 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1231, 1233, 1235, 1236, 1237 and 1238

surplus lines business, and therefore that documentation was not presented to the Department;

- j) She was not aware that in Illinois a surplus lines insurance company who writes policies for Illinois insured must pay a 3.5% surplus line tax, plus stamping fee to the Surplus Line Association of Illinois of .1% and 1% fire marshal tax based upon the property premium and that these taxes are payable by the broker as required by Section 445 of the [Illinois Insurance Code];
  - k) She and her husband are not registered as a surplus lines producer per Section 445(2) but Chaudhari was. And she is not aware that PISI was not registered as a surplus lines producer;
  - l) She is not aware that the Surplus Lines Association of Illinois has confirmed that there has not been a policy issued by "American Fire and Casualty, N.V." that has ever been filed with the association as required nor is she aware that the association does not have a record of issuing tax statements for a policy from "American Fire and Casualty, N.V." or to anyone claiming to represent that entity;
  - m) She is aware of the ongoing litigation in the Cook County Court of Illinois, Chancery Division. She, along with other individuals such as her husband, as well as PISI, is being sued by Willow Electrical. She was deposed and has seen the different filings related to the court case but she has never seen the affidavit of David Ocasek, Executive Director of the Surplus Line Association of Illinois (Department Exhibit #4). She does not really know much about the association;
  - n) She does not hold, or in the past held, any other professional license other than the insurance producer license. She does not hold an insurance producer license in any other state;
  - o) She has been a licensed producer since 1987;
  - p) She has had an administrative action taken against her regarding license in 1991 and it included violations of maintaining the PFTA account and issues related to the cash disbursement register (Department Exhibit #5);
  - q) She is not aware of any other administrative action taken against PISI or related to PISI; and
  - r) There was a matter involving [her husband] and PISI with the Department in 1988 (Department Exhibit #5).
- 28) As part of Cross Examination the Respondent, Gema Fleites, Respondent read into the Record Item #14(a)(b)(c) and (d) and also Item #17 (Department Exhibit #14) (R. 235-37)

- 29) On Re-Direct Examination the Respondent, Gema Fleites, testified in this matter as follows (R. 243-246):
- a) The affidavit regarding David Ocasek has a date of October 2013 (Department Exhibit #4). The date of the original order of revocation entered against her was before [October 2013] possibly in June of 2013. The affidavit involves a lawsuit by Willow Electrical and their attorney Bradley Birge;
  - b) She has never delivered a policy on behalf of "American Fire and Casualty" or placed a policy with them;
  - c) The checks she wrote for "American Fire and Casualty" were for business that she believed was written through Chaudhari who was a surplus lines producer. She does not know whether Chaudhari made filings with the Surplus Lines Association;
  - d) It is her understanding that it is legal for an insurance producer without a license to write business through a surplus line broker; and
  - e) The 1991 Stipulation and Consent Order make references to cash disbursements. When the Department did their investigation in the current matter they requested her cash disbursements register which she provided and to her knowledge there are no allegations in this Order of Revocation that involve cash disbursement registers.
- 30) On Re-Cross Examination the Respondent, Gema Fleites, testified in this matter as follows (R. 246-250):
- a) You have to be licensed to sell insurance but in order to write for surplus lines companies, you do not have to be a [licensed] surplus lines producer. An insurance agent can write surplus lines business as long as there is a surplus line agent who is doing the filings and doing what they are supposed to do. The surplus line producer is in charge of the surplus lines policies and that is why they have a license with the Department; they also have to get a bond;
  - b) Chaudhari was not working for PISI when he was at their business but working for "American Fire and Casualty" [N.V.];
  - c) You do not need a surplus line producer license in order to place business with a surplus line company; and
  - d) She does not maintain any of the contracts that were placed with the business that was supposedly alleged to be a surplus line business with "American Fire and Casualty, N.V."

- 31) On Examination by the Hearing Officer the Respondent, Gema Fleites, testified in this matter as follows (R. 250-258):
- a) To her, American Fire and Casualty Insurance and American Fire and Casualty Insurance, N.V., are not the same. "American Fire and Casualty Insurance Company" is part of the Ohio group, the subsidiary of Liberty Mutual;
  - b) American Fire and Casualty Insurance, N.V. is a completely separate company, it is a surplus lines company and related to Chaudhari who was sharing office space with them and who had the same suite number. She has known Chaudhari since 1992;
  - c) The checks from PISI made to "American Fire and Casualty" (Department Exhibit #2G) are not for the subsidiary of Liberty Mutual but for "American Fire and Casualty, N.V." She cannot explain why "N.V." was left out. She does not own "American Fire and Casualty" or having anything to do with them. She does not know why there isn't a distinction between the "N.V.;"
  - d) Her husband signed off on the checks (*see* Department Exhibit #2G, bates stamp 1292) and she is not sure why her husband did not add "N.V." but it was probably because he was not sending it to the other American Fire [Liberty Mutual subsidiary];
  - e) Sometimes she [abbreviates PISI] as "Prof Ins Ser;"
  - f) She does not know whose account number it is ending in 0132, but assumes it is "American Fire and Casualty, N.V." (*see* Department Exhibit #2G<sup>67</sup>), she does not know if it is Chaudhari's account but she knows that it is not her account (R. 253);
  - g) Her husband is currently not working;
  - h) She has been continuously licensed since 1987 without any lapses;
  - i) Currently the only person working for her is her assistant, Gloria, who is also a licensed producer. Gloria has been with her for 18 years but has only been with her the past three years as the only other person working for her. Prior to her husband no longer working, it was the three of them and nobody else;
  - j) She was responsible for the books and records of the agency, not Gloria (R. 255);
  - k) She does not know what "N.V." stands for;
  - l) Other than the no-knock visit, no one from the Department came [out to the office];

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<sup>67</sup> Bates stamp 1293

- m) She believes she provided everything that was asked of her;
  - n) The Cease and Desist was issued after the no-knock and she does not recall whether there were similar allegations in the matter naming her and her husband (*see* Department Exhibit #1) because it was not applicable to her and it was their decision for her not to attend [the Cease and Desist hearing];
  - o) She provided [deposit tickets] (Respondent Exhibit #1) to the Department examiners;
  - p) The checks that are written to “American Fire and Casualty” are supposed to have “N.V.” written afterwards and they were for policies that were sold (R. 257);
  - q) Sometimes she puts something in the memo line, [for example] in the memo line of [Check #2221<sup>68</sup>] it indicates that it is for a deductible (R. 257); and
  - r) They do not have a contract with Liberty Mutual but they place it through the assigned risk pool which is not under their control.
- 32) On further Re-Direct Examination the Respondent, Gema Fleites, testified in this matter as follows (R. 258-261):
- a) “American Fire and Casualty Insurance Company” is a Liberty Mutual affiliate and she has never placed any business with them;
  - b) She has never placed any business with “American Fire and Casualty Insurance Company, N.V.”;
  - c) The checks that were written to “American and Fire and Casualty” from the PFTA were for premium, the details of which would be in the cash disbursements register and of which was provided to the Department during the course of the examination. There are no allegations in the order of revocation regarding cash disbursements register;
  - d) With respect to the Cease and Desist Order it is her understanding that she could not place business with “American Fire and Casualty, N.V.” and as far as she knows, PISI and [her husband] stopped placing business with “American Fire and Casualty [N.V.]” long before the Cease and Desist Order;
  - e) She recalls her conversation with [her] counsel that they would not oppose the Cease and Desist Order and then they found out much later that a hearing took place anyway; and

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<sup>68</sup> Department Exhibit #2G, bates stamp 1292

- f) In writing checks to insurance companies on the PFTA sometimes she would use abbreviations or a short form. For example she would write "Hartford Steam" in place of the formal name, "Hartford Steam Boiler Insurance Company.
- 33) On further Re-Cross Examination the Respondent, Gema Fleites, testified in this matter as follows (R. 261-265):
- a) In response to whether the policies related to the cash disbursements were provided, she provided everything that was asked of her;
  - b) She was never asked if "American Fire and Casualty<sup>69</sup>" was a surplus lines company or whether she had documents related to them. She knows she heard the name but she was not asked for specific documentation;
  - c) Her signature appears on a check dated February 24, 2006 (*see* Department Exhibit #2G<sup>70</sup>) and which was written from PISI, made payable to "American Fire and Casualty." It does not include "N.V.,"
  - d) The name of the business account in which the checks [written from PISI] were deposited to appears as "American Fire & Casualty Ins Co NV" with no periods in "NV" and the address listed for the company is 2533 North Carson Street, Suite 2283, Carson City, Nevada (*see* Department Exhibit #2G<sup>71</sup>); and
  - e) The name of the account on [a Charter One document] (*see* Department Exhibit #2G<sup>72</sup>) is "American Fire & Casualty Ins Co NV" with no periods in "NV", and the signator listed is Roberto Padron, her father. The special instruction portion indicates "add signer – Joe Fleites, Roberto Padron." This document does not identify Chaudhari as anybody authorized on this business account. The address is listed as 3525 W. Peterson Ave., Suite 601, Chicago, Illinois 60659.
- 34) Midwest Litigation Services recorded the testimony taken in this proceeding and charged the Department \$1403.00 for the Court Reporter's attendance and a transcript of the proceedings (Hearing Officer Exhibit #13).
- 35) Post-hearing briefs were submitted by both parties.

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<sup>69</sup> As used by Department counsel (R. 262)

<sup>70</sup> Bates stamp 1304

<sup>71</sup> Bates stamp 1262

<sup>72</sup> Bates stamp 1263

## DISCUSSION AND ADDITIONAL FINDINGS

- 36) The purpose of this Hearing was to determine the Respondent's eligibility to continue to hold an Illinois Insurance Producer license, All Insurance's eligibility to hold a Business Entity license (collectively, "Respondents") and to determine whether the Director's Order of Revocation should stand.

The Department alleges that the Respondents violated Sections 5/500-70, 5/122 of the Illinois Insurance Code ("Code") and 50 Ill. Adm. Code 3113.40, 3113.50 and 3113.60.

Section 500-70 of the Code (215 ILCS 5/500-70) provides, inter alia:

- (a) The Director may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with this Section or take any combination of actions for any one or more of the following causes:
  - (2) violating any insurance laws, or violating any rule, subpoena of the Director;
  - ...
  - (4) improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
  - ...
  - (8) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere;

Section 122 of the Code (215 ILCS 5/122) provides, inter alia:

- (a) It is unlawful for a person as officer, director, clerk, employee, or agent to serve or represent a company in connection with an act performed or contract entered into in violation of Section 121 [215 ILCS 5/121]...

Section 121 of the Code (215 ILCS 5/121) provides in part:

- (1) It shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State, without a certificate of authority from the Director; provided that this subsection shall not apply to contracts procured by agents under the authority of Section 445 [215 ILCS 5/445], nor to contracts of reinsurance.

50 Ill. Adm. Code 3113.40 regarding Premium Fund Trust Account provides inter alia:

...

- (b) All licensees required to maintain a PFTA, pursuant to subsection (c), shall certify at each license renewal or reinstatement date that premiums are held in a PFTA. The account must be designated as a Premium Fund Trust Account on the bank records and those words shall be displayed on the face of the checks of that account.

...

- (e) All licensees who maintain or are required to maintain a PFTA must deposit all premiums received into the PFTA.

...

- (h) The following disbursements may be lawfully withdrawn from the PFTA:
  - (1) Net or gross premium remittances due other licensees or insurers. Claims payments or reinsurance premiums when offset at the direction of the insurer may be transferred to another account;
  - (2) Return premiums due insureds;
  - (3) Commissions due the licensee, net of any financial institution fees or service charges, or commissions due another licensee only when the commission withdrawals is matched and identified with premium previously deposited into the PFTA;
  - (4) Non-premium monies when matched and identified with prior non-premium PFTA deposits;
  - (5) Interest or other revenue which the licensee is authorized to retain;
  - (6) Withdrawals pursuant to subsections (h)(3), (4) and (5) must be made payable to the licensee or another licensee.

...

50 Ill. Adm. Code 3113.50 regarding Minimum Record requirements provides, inter alia:

...

- (c) All books and records for a calendar or fiscal year shall be maintained for at least 7 years thereafter.
- (d) Licensees shall maintain a cash receipts register of all monies received. The minimum detail required in the register shall be:

- 1) Date monies received and date deposited. If the licensee records the date of deposit of each cash receipt elsewhere in his books and records the date of deposit is not required in the cash receipts register.
- 2) Amount received - If the amount received does not agree with the amount billed, the licensee shall prepare a written record of the application of the amount received.
- 3) Name of insured, licensee or insurer making the payment.
- 4) Policy number or other description of the receipt. The description shall be in such detail as to permit the Department's examiner to identify the source document substantiating the receipt.

...

#### Respondent's Oral Motion for Directed Verdict

The Hearing Officer reserved her ruling regarding the Respondent's Oral Motion for Directed Verdict with respect to Allegations B, C, D, E, F, G and H (R. 172-181) and Department's Objection (R. 181-188) and will address it prior to discussing the Department's allegations against the Respondent. The Respondents' Motion for Directed Verdict is denied. Pursuant to 50 Ill. Adm. Code 2402.100(f), the Hearing Officer shall rule upon all motions, except that [s]he shall have no authority to dismiss or decide a hearing on the merits without granting all parties to the proceeding a right to be heard and to establish a record.

#### Department Allegations A-H

In this matter the evidence and testimony indicates that the Respondent is part owner of the business entity, PISI, and as of February 27, 2012, held the title of president. Additionally, on February 27, 2012, the Respondent became the designated registered licensed producer ("DRLP") of PISI and therefore the responsible party for PISI's compliance with the insurance laws and rules of the State of Illinois as of that date.

An examination was conducted on the Respondents pursuant to Article XXIV of the Illinois Insurance Code by several employees of the Department, some of who are no longer employed with the Department or have moved into a different unit within the Department. This investigation or examination was prompted by a consumer complaint from Bradley Birge and based on allegations that PISI was writing business for an unauthorized company named "American Fire and Casualty Insurance Co., N.V." It is the Department's position that "American Fire and Casualty Insurance Co., N.V." is being confused with the Liberty Mutual affiliate, "American Fire and Casualty Insurance Co." To say the least, this very slight yet significant distinction, was very confusing throughout the Hearing. It was often times unclear as to which company was being referred to since counsels for both parties, as well as witnesses, would use "American Fire and Casualty Insurance Co." or "American Fire and Casualty" when

referring to “American Fire and Casualty Insurance Co., N.V.” thereby prompting the Hearing Officer to inquire as to which company was being referred to. And with respect to witness testimony in this report, the name of the insurer is in quotation marks to reflect how it was used by the witness, or alternatively, as it was used in examination by counsel.

### Allegation A

In Part A of the Order of Revocation, the Department alleges that the Respondents engaged in the business of insurance without a certificate of authority on behalf of American Fire and Casualty, N.V. and that by transacting insurance business on behalf of an unauthorized insurer, is in violation of Section 122(a) of the Code. In support, the Department provided a letter from the Department’s corporate regulatory section indicating that the Department did not have any record of American Fire and Casualty Insurance Co., N.V. being authorized to conduct business as an insurance company in Illinois and that there were no variations of such name in the Department’s database or that of the National Association of Insurance Commissioners (“NAIC”) (Department Exhibit #2C). There is also a letter from the Nevada Division of Insurance indicating that American Fire and Casualty Insurance Co., is domiciled in Ohio, a Liberty Mutual Affiliate, and authorized in Nevada to write property and casualty insurance and further indicating that there were no variations of American Fire and Casualty Insurance Co., N.V. in their database or that of the NAIC (Department Exhibit #2B). The presumption appears to be that “N.V.” or “NV,” also interchangeably used throughout documents, is that it stands for Nevada. The Department argues because American Fire and Casualty Insurance Co., N.V. does not have a certificate of authority, the Respondents’ dealings with them amounts to transacting insurance business on behalf of an unauthorized insurer in violation of Section 122(a). As evidence of transacting business, the Department offered fourteen (14) certificates of liability insurance listing PISI as producer and listing the insurer affording coverage for the insured as “American Fire and Casualty” (Department Exhibit #2C), the company the Department believes to be the Liberty Mutual affiliate. A violation of Section 122(a) necessarily includes a violation of Section 121 of which provides inter alia:

- (1) It shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State, without a certificate of authority from the Director; *provided* that this subsection shall not apply to contracts procured by agents under the authority of Section 445 [215 ILCS 5/445], nor to contracts of reinsurance (emphasis added).

The Respondent testified that American Fire and Casualty Insurance Co., N.V. is a surplus lines company, and that the insurer listed on the certificates of liability insurance is the surplus lines company and not the Liberty Mutual affiliate, and that these were surplus lines policies. At the Hearing the Respondent offered a general power of attorney for Mr. Chaudhari (Respondent Exhibit #2), the alleged surplus lines broker who shared office space with them, to show that American Fire and Casualty Insurance Co., N.V. was a surplus lines company. For the sake of argument the Hearing Officer will give the Respondents the benefit of the doubt and in light of the fact that Department could not necessarily dispute this. The Hearing Officer notes that it

appears to be the first time the Respondent shared this significant distinction and not previously to Department examiners. The Respondent explains she did not inform the examiners because she was not specifically asked and while that appears to be a truthful statement, the Hearing Officer finds such explanation to be somewhat insincere.

In any event, the significance of Respondent's characterization of the unauthorized company as a surplus lines company, and as pointed out in Respondents' post-hearing brief, is that Section 121 exempts those contracts procured by agents under the authority of Section 445, which pertains to surplus lines. The Respondent testified that her husband, Eulogio Fleites, placed business with "American Fire and Casualty," an entity she knows to be "American Fire and Casualty, N.V.," through Chaudhari, the alleged surplus lines broker. The Respondent testified neither she nor her husband are surplus lines brokers but that a licensed insurance agent may write surplus lines business through a licensed surplus lines broker, of which the Hearing Officer agrees. However, in order for the exemption to apply the transactions must fall under an exemption as provided in Section 121-2.02 through Section 121.2.10 of the Code. In their post-hearing brief the Respondents suggest the industrial insured exemption. Section 121-2.08 defines an "industrial insured" as an insured:

- (a) which procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full time employee acting as an insurance manager or buyer or services of a regularly and continuously retained qualified insurance consultant;
- (b) whose aggregate annual premiums for insurance on all risks, except for life and accident and health insurance, totally at least \$100,000; and
- (c) which either (i) has at least 25 full time employees, (ii) has gross assets in excess of \$3,000,000, or (iii) has annual gross revenues in excess of \$5,000,000.

The Respondents did not meet their burden to show that the above criteria for such exemption were met and therefore the Respondents cannot claim this exemption.

As such, with respect to the fourteen (14) certificates of liability insurance, one is dated as early as April 30, 2011 and pertains to the insured, Illinois Concrete (Department Exhibit #2C<sup>73</sup>) and the latest certificate is dated January 24, 2012 and pertains to the insured, Brad Contractor, Inc. (Department Exhibit #2C<sup>74</sup>). The Respondent acknowledged that her signature appears on one of the certificates of liability insurance, dated March 22, 2011, and pertains to the insured Illinois Concrete (Department Exhibit #2C<sup>75</sup>) but that it was not her signature on the other remaining certificates. Since the Respondent's designation as DRLP on February 27, 2012 is after the most recent certificate of liability insurance issued, the Respondent would not be held responsible for the business entity if there was a violation. However, as to Respondent's individual liability, despite her testimony that it was her husband who placed this business, it is somewhat questionable that Respondent was not involved based on her representations. The Respondent testified that she returned to work full time in 2009 due to her husband's health and

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<sup>73</sup> Bates stamp 1223

<sup>74</sup> Bates stamp 1221

<sup>75</sup> Bates stamp 1220

as a result had to go to PISI every day and that her day to day responsibilities included anything from returning messages to selling insurance and everything that needed to be done at the office (R. 195). Additionally, the Respondent further testified that her husband's medical treatments caused him to be in bed for very long periods of time and that although her husband was involved, it was "very, very limited."

Section 122 of the Code (215 ILCS 5/122) provides, inter alia:

- (a) It is unlawful for a person as officer, director, clerk, employee, or agent to serve or represent a company in connection with an act performed or contract entered into in violation of Section 121 [215 ILCS 5/121]...

The only other individual employed for the past three years was Respondent's assistant, Gloria, and there was no indication that Gloria was involved which then leaves the Respondent's husband, whose involvement was by Respondent's own testimony, "very, very limited." The Respondent by her own admission did everything that needed to be done, which may have included signing the certificates or generating the certificates of liability to be issued. It is therefore reasonable to conclude that the Respondent, in her capacity as an employee of PISI, served not only the insured, but also served American Fire and Casualty Insurance Co., N.V., as an intermediary in connection with an act performed or contract entered into in violation of Section 121. While the Hearing Officer does not find that the Respondent is responsible for the PISI with respect to this allegation due to the effective date of her DRLP status, the Hearing Officer finds that the Respondent individually has violated Section 122 of the Code and as such the Director was within his statutory authority to revoke the Respondent's Illinois producer license pursuant to Sections 500-70(a)(2) and (8) of the Code and for assessing a civil penalty.

#### Allegation B

In Part B of the Order of Revocation, the Department alleges that the Respondents misled Illinois consumers by interchangeably using the names "AFC-NV, American Fire and Casualty Underwriting and American Fire and Casualty." The Hearing Officer will focus on the certificates of liability insurance with respect to this allegation since it is the only link to the potential consumers that were alleged to have been misled. The name of the insurer which appeared on the certificates of liability insurance were "American Fire and Casualty" and on one occasion, "American Fire and Casualty Ins. Co.," of which appeared on a January 12, 2010 letter to the City of Chicago (*see* Department Exhibit #2C); there were no other variations used. The Hearing Officer would like to point out again that throughout the hearing there were many times it was unclear which entity was being referred to since both parties' counsel and witnesses would use "American Fire and Casualty" or "American Fire and Casualty Insurance" when referring to either American Fire and Casualty Insurance Co. or American Fire and Casualty Insurance Co., N.V., and therefore confusing.

The Respondent testified that "American Fire and Casualty Insurance Company" is a subsidiary of Liberty Mutual. The Respondent testified that she knows "American Fire and Casualty" to be "American Fire and Casualty, N.V.," and which she knows to be a surplus lines

company, a completely separate company. The Respondent testified that she would use abbreviations or a short form of the names of insurance companies and as an example, she testified that she would write "Hartford Steam" in place of "Hartford Steam Boiler Insurance Company," which the Hearing Officer would agree makes sense if there is no other entity with a similar variation. If the Respondent's rationale for dropping the letters NV was because she was using an abbreviated form, it was done in very poor judgment since those two letters, regardless of whether punctuation was used, is precisely what sets it apart from the Liberty Mutual affiliate. The Hearing Officer finds it hard to believe that the Respondent in her 30 years of experience in the insurance business did not know that the similarly named Liberty Mutual affiliate would be a cause for confusion.

However, the Department's allegation is not whether the names used by the Respondents are confusing or misleading, but whether there were consumers who were in fact misled and as such the Hearing Officer finds a couple of significantly problematic issues. As mentioned previously, the only name that appeared on documents pertaining to any insured was "American Fire and Casualty" and "American Fire and Casualty Ins. Co." The first significantly problematic issue is the identity of the misled consumers. Based on the certificates of liability insurance, the only potential consumers in this matter appear to be Illinois Concrete Inc., Brad Contractors, Inc., and the City of Chicago. Another possible consumer mentioned during Nitka's testimony was Princess Foods; however no documents or other testimony was introduced. The second other significantly problematic issue is that there was no evidence or testimony from any of the consumers to show that anyone felt misled and how they felt misled. Furthermore, with respect to Illinois Concrete and the City of Chicago, Nitka testified that he did not speak to anyone from those entities. In this matter the listed insurer was either "American Fire and Casualty" or "American Fire and Casualty Insurance" and it would be misleading if the consumer was under the impression that the identified insurer as indicated on the certificates was for the Liberty Mutual affiliate, only to find out that it was really the alleged surplus lines carrier, of which the consumer had not intended. Without meaningful evidence to support such allegation, it amounts to speculation. Just as one could easily speculate that the consumers understood that American and Fire Casualty was referring to the alleged surplus lines insurer, in which case the argument that anyone was misled fails. Regardless, such a determination cannot be made based on the evidence provided.

And with respect to the Department's reliance on the Cease and Desist Order from Hearing No. 13-HR-0265 and the findings in that matter (Department Exhibit #1), while the Hearing Officer takes judicial notice that such a hearing occurred and a Final Order was issued, she does not find it as evidence to substantiate this particular allegation. The Respondents named in Hearing No. 13-HR-0265, which included the Respondent, did not appear at that hearing and that decision was based on the evidence provided by the Department which went uncontested and by way of default. However, in this matter, the Respondent appeared and provided testimony and evidence to address the allegations against her, whether substantiated or not, and the findings for the present hearing are based on what was introduced in this specific matter. As such the Hearing Officer finds that the Director had insufficient basis to revoke Respondents' licenses pursuant to Section 500-70(a)(8) and for assessing a civil penalty because if there were indeed consumers who were misled, the evidence as presented does not support it. And with respect to Section 500-70(a)(2), another basis for revocation cited by the Department,

there is no insurance law, rule or subpoena of the Director that appears to have been violated and as such the Director also had insufficient basis to revoke Respondents' licenses pursuant to Section 500-70(a)(2) or for assessing a civil penalty.

### Allegation C

In Part C of the Order of Revocation the Department alleges that the Respondents forwarded monies from the PFTA to "American Fire and Casualty Insurance Co., N.V.," an unauthorized insurer, and that by transacting insurance business on behalf of an unauthorized insurer is in violation of Section 122(a) of the Code. In their post-hearing brief the Respondents argue that "forwarding premiums lawfully due to an insurance company, even an unauthorized company" does not violate the prohibitions in Section 122(a) against doing business on behalf of an unauthorized company." While the Hearing Officer agrees with Respondents contention that PISI was paying premiums to American Fire and Casualty Insurance Co., N.V. on behalf of the insured, it is also reasonable to conclude that the Respondent, in her capacity as an employee of PISI and acting as intermediary, was also serving American Fire and Casualty Insurance Co., N.V., as contemplated per Section 122(a). Additionally, the Hearing Officer disagrees with Respondents' argument that paying premiums due to an insurer, even an unauthorized insurer, is not an action that constitutes transacting insurance business based on Respondents' argument that it was not included in Section 121. Section 121 of the Code provides inter alia:

- (2) The following acts, if performed in this State, shall be *included among* those deemed to constitute transacting insurance business in this State:
  - (a) maintaining an agency or office where contracts are executed which are or purport to be contracts of insurance with citizens of this or any other State;
  - (b) maintaining files or records of contracts of insurance; or
  - (c) receiving payment of premiums for contracts of insurance. (*emphasis added*)

The language "included among" indicates that the examples provided are not exhaustive among those deemed to constitute transacting business. Transaction of insurance business is defined in Section 121-3 of the Code which provides:

Any of the following acts in this State, effected by mail or otherwise by or on behalf of an authorized insurer, constitutes the transaction of an insurance business in this State.

- (a) The making of or proposing to make, as an insurer, an insurance contract.
- (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
- (c) The taking or receiving of any application for insurance.

- (d) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
- (e) The issuance or delivery of contracts of insurance to residents of this State or to persons authorized to do business in this State.
- (f) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of that contract, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this State. This paragraph does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of that employer.
- (g) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of this Act.
- (h) The transacting or proposing to transact any insurance business in substance equivalent to any of the foregoing in a manner designed to evade this Act.

...

The Hearing Officer finds that the act of forwarding premiums, which Respondent admittedly did, falls under (f) (g) or (h) and are among those that constitute the transaction of business in this State. In support the Department offered forty-seven (47) checks from PISI's PFTA account ending in 8609 and which were made payable to "American Fire and Casualty" (*see* Department Exhibit #2G). The dates of the checks are dated as early as September 5, 2005<sup>76</sup> through January 4, 2012<sup>77</sup>. The most recent check is dated January 4, 2012, prior to the Respondent's designation as DRLP, effective February 27, 2012, and therefore the Respondent is not liable for the business entity.

However, with respect to the Respondent's individual liability, as mentioned previously the Respondent returned to work full time in 2009 in order to do everything that needed to be done at the office. The Respondent testified she signed checks on behalf of PISI and of which occurred prior to becoming DRLP and as early as 2000. When the Hearing Officer asked about the signature on these forty-seven (47) checks, the Respondent testified that her husband signed off on these checks and that it was his signature, however the Hearing Officer is not entirely convinced since the Respondent also admitted that her signature appeared on a check dated

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<sup>76</sup> Check #2211, Department Exhibit #2G, bates stamp 1292

<sup>77</sup> Check #3959, Department Exhibit #2G, bates stamp 1404

February 24, 2006<sup>78</sup>. The Respondent also testified that sometimes she would put something in the memo line when she referred to a check dated September 30, 2005<sup>79</sup>. The Respondent further contends that although the “NV” or “N.V.” was left off, they were payments for premium to American Fire and Casualty Insurance Co., N.V., the alleged surplus lines company and who Respondents do not dispute is an unauthorized insurer. The Hearing Officer finds that the Respondent in her capacity as an employee of PISI and as an intermediary on behalf of the insured, by forwarding premiums from the PFTA to American Fire and Casualty Insurance Co., N.V., has also served the unauthorized insurer American Fire and Casualty Insurance Co., N.V., within the meaning of Section 122 of the Code and therefore in violation. As such the Director was within his statutory authority to revoke the Respondent’s Illinois producer license pursuant to Sections 500-70(a)(2) and (8) of the Code and for assessing a civil penalty.

#### Allegation D

In Part D of the Order of Revocation the Department alleges that the Respondents issued twenty-five (25) unlawful withdrawals from the PFTA related to American Fire and Casualty Insurance Co., N.V. and totaling \$397,607.82 during the time period of September 30, 2005, through January 10, 2013 and further, that the Respondents could not provide supporting documentation to support the improper disbursements to American Fire and Casualty Insurance Co., N.V., in violation of 50 Ill. Adm. Code 3113.40(h). Nitka testified that Section 3113.40(h) provides examples of the only lawful disbursements, of which only six are listed, that can be withdrawn from the PFTA and that anything outside of those examples would be considered unlawful if there were no supporting documents. Nitka further testified that it would also be considered unlawful because the checks were payable to an unauthorized insurer and that even if it were for the Liberty Mutual affiliate, the Respondents do not have authority to do business with them. The Department offered the same forty-seven (47) checks it presented in support for Allegation C and which were previously determined to be for premium payments. However the Hearing Officer notes that this particular allegation mentions only twenty-five (25) unlawful withdrawals and that there is nothing to distinguish them in a meaningful way. Of the forty-seven (47) checks, ten (10) checks reflected a notation in the memo line regarding what the check was for. For example, check #2211<sup>80</sup> reflected “dedt” which Respondent explained meant deductible and with respect to check ##13, 39, 40, 41, 42, 45, 47, 48 and 50, the memo line reflected that the check was for a statement regarding a particular month (*see* Department Exhibit #2G<sup>81</sup>). The Respondent further testified that the purpose of these [47] checks were for the premiums on policies that were sold and related to business that her husband placed with American Fire and Casualty Insurance Co., N.V.

Pursuant to Section 3113.40(h)(1), “net or gross premium remittances due other licensees or insurers” may be lawfully withdrawn from the PFTA. The Hearing Officer finds that the checks are lawful disbursements as contemplated by this section in light of Nitka’s testimony

<sup>78</sup> Department Exhibit #2G, Check #2282, bates stamp 1304.

<sup>79</sup> Department Exhibit #2G, Check #2211, bates stamp 1292

<sup>80</sup> Department Exhibit #2G, bates stamp 1292.

<sup>81</sup> Department Exhibit #2G, bates stamp 1311, 1366, 1368, 1370, 1373, 1380, 1393, 1395, 1399 respectively

that there is nothing in this section that states that a producer cannot pay premiums to an unlicensed insurer out of the PFTA (R. 133) and further, that a producer who collects premiums from an insured has an obligation to forward such premium to the insurer or it would be considered as improperly withholding monies (R. 126). The Department's contention that the lack of supporting documentation turns the otherwise lawful disbursement into an unlawful disbursement is not completely persuasive when looking at the other examples provided in this section. For example, Section 3113.40(h)(3) provides as an example of lawful disbursement, "commissions due the licensee, net of any financial institution fees or service charges, or commissions due another licensee *only when the commission withdrawals is matched and identified with premium previously deposited into the PFTA*" (emphasis added). If the lawful disbursement of premium payments under Section 3113.40(h)(1) required supporting documentation, it would seem the language would have required it as it does for commission withdrawals in Section 3113.40(h)(3). The supporting documentation that was sought from the Department included names of consumers, amount of premiums or anything related to the amount of the check; however this is more suggestive of requirements related to cash disbursement pursuant to Section 3113.50(e) which provides:

Licensees shall maintain a cash disbursement register of all disbursements. The minimum detail required in the register shall be:

- 1) Date disbursed or endorsed to insurer(s), other licensee(s), insureds or transferred to another account; and
- 2) Check number; and
- 3) Amount disbursed – If the amount disbursed does not agree with the amount billed, the licensee shall prepare a written record as to which policies, insureds and amounts the disbursement is to apply. The written record shall be sent with the disbursement and a copy maintained by the licensee; and
- 4) Name of insurer, licensee, insured or other account pursuant to Section 3113.40(g) to whom the payment or transfer was made; and
- 5) Policy number or other description of the disbursement. The description shall be in such detail to identify the source document substantiating the purpose of the disbursement; and
- 6) If the disbursement is a commission payment to the licensee or another licensee, the disbursement shall be supported by a written record of the following:
  - A) Name of insured;
  - B) Policy number;
  - C) Gross premium;
  - D) Commission rate;
  - E) Net commission (Equals the amount of the PFTA check);
  - F) Check number to which the written record applies.

In this matter the Department does not allege that Respondents failed to maintain a cash disbursement register, however that is not to say that a violation does not exist, but only that it was not part of the Department's allegations in this Order of Revocation. As such, with respect to Allegation D, the Director had insufficient basis to revoke Respondents' licenses pursuant to Sections 500-70(a)(2) and (8) of the Code and for assessing a civil penalty.

#### Allegation E

In Part E of the Order of Revocation the Department alleges that Respondents' failed to maintain books and records in violation of 50 Ill. Adm. Code 3113.50(c). The allegation specifically refers to the lack of supporting documentation for thirteen (13) checks that the Respondents issued from their PFTA during the period July 25, 2008 through January 10, 2013, for American Fire and Casualty Insurance Co., N.V. The allegation also refers to the lack of Respondents' ability to produce consumer files for Consumer 1 and Consumer 2.

With respect to the checks the Department argues that because the Respondents could not provide supporting documentation to substantiate these payments, it amounted to a failure to maintain books and records. The Hearing Officer would like to point out that the evidence in this matter indicates there were forty-seven (47) checks for American Fire and Casualty Insurance Co., N.V., yet this particular allegation is only in reference to thirteen (13) checks, and interestingly the Department chose only to introduce eight (8) checks<sup>82</sup>. The distinguishing factor in the eight (8) checks was that it provided in the memo line that the purpose of the check was related to statements regarding a particular month. The thirty-seven (37) remaining checks<sup>83</sup> reflected nothing in the memo line and what is puzzling is that it seems more reasonable to question what those checks were for, however it appears that the Department was satisfied that those checks were for payment of an insurer statement. For example, on cross examination Nitka agreed that check #3959<sup>84</sup> and in which the memo line was left blank, would not be subject to this particular allegation that it was for an insurer statement, however he believed that it was for [the insurer statement] by further stating "what other purpose would you have to write a check to an insurance company?" (R. 137) For purposes of this allegation only eight (8) checks were introduced and will be the only ones at issue with respect to whether Respondents provided the supporting documentation, of which appears to be the insurer statements.

The Respondent testified that although she saw the statements from Chaudhari, she, PISI or her husband did not maintain records or keep a separate account of documentation relating to business transacted regarding American Fire and Casualty Insurance, N.V. The Hearing Officer questions whether that is true since Respondent during her testimony refers to their deposit ticket book and cash disbursements file records which showed that money was going out and also because the Respondent, interestingly provided a power of attorney given to Chaudhari for American Fire and Casualty Insurance Co., N.V. (Respondent Exhibit #2) and which Respondent

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<sup>82</sup> Check ##3516, 3541, 3547, 3560, 3661, 3701, 3749 and 3959 (bates stamp 1366, 1368, 1370, 1373, 1380, 1393, 1395, and 1399)

<sup>83</sup> The evidence indicates that there were nine (9) checks in total which reflected that payment was for a statement and a single check indicated that it was allegedly for a deductible, leaving thirty seven (37) checks.

<sup>84</sup> Department Exhibit #2G, bates stamp 1404

explained was in their file for Chaudhari. The Respondent testified that Chaudhari took all of the business records in 2012 when he no longer shared office space with them. The Respondents appear to contend that insurer statements are not included within the meaning of "books and records" as referenced in Section 3113.50 which provides inter alia:

- a) Licensees shall maintain books and records which reflect all insurance transactions, specifically in regard to premiums and other monies received and deposited into the PFTA and lawfully withdrawn from the PFTA....

As Respondents point out this regulation does not specifically indicate what falls under "books and records," but, it is rather broadly referring to those records which "reflect all insurance transactions," and as such it could reasonably include an insurer statement because it would presumably reflect the underlying reason for the disbursement of the check. Pursuant to Section 3113.50(c) such records must be kept for at least 7 years thereafter. As such the Hearing Officer finds that the absence of insurer statements regarding the eight (8) checks would amount to a violation of Section 3113.50(c), but that standing alone the revocation would be inappropriate and too harsh of a penalty.

And with respect to Department's allegation that the Respondents failed to provide files for Consumer 1 and Consumer 2, it is unclear who the consumers are. Nitka could not with certainty identify who Consumer 1 or Consumer 2, but that he believed Princess Foods to be one of them. Nitka testified that he did not ask the Respondent about Consumer 1 or Consumer 2 but believed Stewart, the original examiner, did. Based on Nitka's testimony it appears that the purpose of requesting the consumer files were due to claims that were brought by the consumers, one of which was allegedly Princess Foods and of which PISI had to satisfy. The Respondent testified that she recalled being asked about two specific files from Masino but that they pertained to Illinois Concrete and Brad Contractors. Although consumer files would presumably include payments for claims and fall under the umbrella of records that would reflect all insurance transactions, it is unclear which consumer files were requested and therefore the Hearing Officer does not find a violation of Section 3113.50(c) and that even if there was a violation, revocation based on two consumer files would be inappropriate and too harsh of a penalty. Also based on the Department's allegation and what was offered in support, the Hearing Officer does not find that the Respondents' failure to provide the requested documentation was demonstrative of incompetence, untrustworthiness and financial irresponsibility. As such the Director had insufficient basis to revoke Respondents' licenses pursuant to Sections 500-70(a)(2) and (8) of the Code and for assessing a civil penalty.

## Allegation F

In Part F of the Order of Revocation the Department alleges that the Respondents issued fraudulent certificates of insurance. This allegation is based on the theory that the insurer listed on the certificates of insurance, "American Fire and Casualty", is in fact the unauthorized insurer, American Fire and Casualty Insurance Co., N.V., and that the Respondents intentionally used this name to give the insured the impression that it is the Liberty Mutual Affiliate, "American Fire and Casualty Insurance Co." In support, the Department offered a letter dated February 6, 2013 from Liberty Mutual to the Department which indicated that upon review of the Liberty Mutual Commercial Lines division, there was no record of PISI as being authorized to produce or bind any policies on behalf of Liberty Mutual and specifically, for American Fire and Casualty Insurance and Founders Insurance. The letter also advised that the policy numbers on the certificates of insurance would not be numbers generated by them (*see* Department Exhibit #2C). In defense, the Respondent testified that she does not write business through the Liberty Mutual affiliate, except for workers compensation coverage in the assigned risk pool of which she has no control over and of which the Hearing Officer agrees. The Respondent further testified that the insurer named in the fourteen (14) certificates of liability insurance, "American Fire and Casualty," is not the Liberty Mutual affiliate and is supposed to represent the alleged surplus lines company, American Fire and Casualty Insurance Co., N.V.

As discussed and determined in Allegation A, it is reasonable to conclude that the Respondent was involved in the issuance of the certificates of liability based on her increased duties which became effective in 2009 and for which she was previously determined to be individually liable. The Department in their post-hearing brief argues that the fraud in this matter is that Respondents *intentionally* listed the wrong insurance company. However, the Department's evidence (Department Exhibit #2C) does not provide the necessary link in support of this argument since the Respondent contend that the insurance company they listed is the right company, the alleged surplus lines company. Problematic and discussed previously, nothing suggests that these insured was misled or defrauded by the certificate of liability insurance or that the insurer listed was not who the insured thought was affording coverage. Although the Hearing Officer finds it suspicious with how the Respondents identified the insurer on the certificates, in that it does not in any meaningful way distinguish it between the Liberty Mutual affiliate and the alleged surplus lines company, there is not enough evidence to support an ulterior motive behind the Respondents using the Liberty Mutual affiliate, American Fire and Casualty, instead of the full name of the alleged surplus lines insurer, American Fire and Casualty Insurance Co., N.V. As such the Director had insufficient basis to revoke the Respondent's license pursuant to Section 500-70(a)(8) of the Code and for assessing a civil penalty.

## Allegation G

In Part G of the Order of Revocation the Department alleges that the Respondents did not maintain a cash receipts register for the PFTA in violation of 50 Ill. Admin. Code 3113.50(d). The Respondent testified that she is responsible for books and records and therefore her responsibilities would include maintaining the cash receipts register. Nitka testified that the Respondent provided deposit slips in place of the cash receipt register and that they are not acceptable because it does not have all of the information needed for the cash receipts register. The Respondents argue in their post-hearing brief that the deposit slips with accompanying details are in compliance with Section 3113.50(d). For example, the Respondent offered an exhibit which included a copy of the front of the deposit book, a deposit ticket and a customer receipt dated October 22, 2012, which reflected the total amount deposited of \$29,244.00 (Respondent Exhibit #1). On the back of the customer receipt were six entries totaling [29,244.00] as follows:

October 22, 2012

Alsip Hospitality	\$6080.00
Ramada Lake Shore	\$19104.00
Andres Roofing	\$100.00
Odonoghue Builders	\$3349.00
Saul Miranda	\$161.00
Will Carrier Express	\$450.00
Total	\$292244.00

The deposit slip as introduced does not have the required information pursuant to Section 3113.50(d) because it requires the following minimum detail:

- 1) Date monies received and date deposited. If the licensee records the date of deposit of each cash receipt elsewhere in his books and records the date of deposit is not required in the cash receipts register.
- 2) Amount received - If the amount received does not agree with the amount billed, the licensee shall prepare a written record of the application of the amount received.
- 3) Name of insured, licensee or insurer making the payment.
- 4) Policy number or other description of the receipt. The description shall be in such detail as to permit the Department's examiner to identify the source document substantiating the receipt.

The deposit slip did not reflect the date the monies were received nor did it provide a policy number with respect to the insured. Moreover, pursuant to 3113.50 (f), "all PFTA journal entries for receipts and disbursements shall be supported by evidential matter as provided in

Sections 3113.50(d) and 3113.50(e). The *evidential matter must be referenced in the journal entry* so that it may be traced for verification” (emphasis added). The Respondent’s explanation that they have the underlying documentation relating to each of the entries somewhere in the file or in the office is not acceptable as the minimum required information must be documented in a journal entry, which in this case is the cash receipts register. Although the Respondent testified that she would have showed the examiners the supporting documentation if she was asked, the Hearing Officer finds such testimony again to be insincere considering her knowledge and experience in the insurance business. As such the Hearing Officer finds that the Respondents<sup>85</sup> failed to maintain a cash receipts register in violation of 50 Ill. Admin. Code 3113.50(d) and as such the Director was within his statutory authority to revoke the Respondents’ licenses pursuant to Section 500-70(a)(2) and (8) of the Code and for assessing a civil penalty.

#### Allegation H

In Part H of the Order of Revocation the Department alleges that the Respondents did not properly label their PFTA bank statements in violation of 50 Ill. Adm. Code 3113.40(b). This section requires that the account must be designated as a Premium Fund Trust Account on the bank records and those words shall be displayed on the face of the checks of that account. The Respondent offered no testimony with respect to this allegation and there is no dispute that the Respondents properly labeled the face of the checks for the PFTA. The Respondents argue in their post-hearing brief that the monthly statements for the PFTA, which included copies of the properly labeled checks and therefore reflected the required language, “Premium Fund Trust Account,” are in compliance with Section 3113.40(b). The Hearing Officer disagrees with this argument as this section requires that the account be specifically designated as a PFTA through the use of this specific language. The copies of the checks are merely attachments and not a proper designation as contemplated by this section. The Respondents’ argument that they do not have control over how the bank prints its bank account statements is not persuasive because it is not the bank’s responsibility to designate the name of a client’s account but that of the Respondents, something that is not difficult to do. As such the Director was within his statutory authority to revoke the Respondents’<sup>86</sup> licenses pursuant to Section 500-70(a)(2) and (8) of the Code and for assessing a civil penalty.

Based on the totality of the evidence and testimony presented in this matter, the Hearing Officer concludes that the Respondent, individually and on behalf of PISI as DRLP, did not maintain books and records (Allegation E) in compliance with 50 Ill. Adm. Code 3113.50(c), did not maintain a cash receipt register (Allegation G) in compliance with 50 Ill. Adm. Code 3113.50(d) and that they did not properly label their PFTA bank records (Allegation H), *i.e.* bank statements, in compliance with 50 Ill. Adm. Code 3113.40(b). Although the Director was within his statutory authority when he revoked the Respondents’ Illinois insurance producer license and

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<sup>85</sup> The Respondent is liable for the business entity since Respondent testified that she is responsible for the books and records and the deposit slip that was offered into evidence was dated October 22, 2012, after the Respondent was designated DRLP, which was effective February 27, 2012.

<sup>86</sup> The Respondent is liable for the business entity since Respondent testified that she is responsible for the books and records and the bank statements offered into evidence included those dated after the Respondent was designated DRLP, which was effective February 27, 2012.

business entity license pursuant to Sections 500-70(a)(2) and (8) of the Code, revocation for these three (3) allegations standing alone or combined does not warrant a revocation as it would be too harsh of a penalty. With respect to the Respondent in her individual capacity and in regard to Allegations A and C, while the Department did not overwhelmingly show that the Respondent violated Section 122(a) of the Code, the Department met its burden of showing by a preponderance of the evidence, enough evidence to support such allegations. Although the Director was within his statutory authority to revoke the Respondent's Illinois insurance producer license pursuant to Sections 500-70(a)(2) and (8) of the Code, the Hearing Officer believes that revocation would be too harsh of a penalty. All remaining allegations (Allegations B, D, E and F) against the Respondents were not substantiated based on the evidence and testimony that was entered into the Record.

Pursuant to Section 500-70(a) the Director may impose a lesser sanction than revocation to the Respondents. Revocation may be too harsh of a penalty, however due to the seriousness of the allegations in Allegations A and C, some sanction is appropriate and necessary for those allegations, as well as for Allegations E, G and H. Prior to discussing the appropriate sanction the Hearing Officer would like to make some observations. The Respondent in this matter is not a novice but she has been in the insurance business for at least 30 years, working alongside her equally or more experienced husband and would seemingly be aware of the business dealings of PISI and of her husband as they related to American Fire and Casualty Insurance Co., N.V., and particularly more so when the Respondent had to assume increased responsibilities in 2009. The Respondent has also known as early as April 12, 2013, the date of the superseded Order of Revocation, the allegations against her and also the allegations as they pertain to American Fire and Casualty Insurance Co., N.V., based on the Final Order issued on February 19, 2014 (Department Exhibit #1) with regard to the Cease and Desist Order dated September 28, 2013. However, the Respondent gave the impression that she was very removed from anything that had to do with the alleged surplus lines company, or that her role was limited to writing checks, and otherwise deferred much of the actions alleged to her husband, who she admits was involved with American Fire and Casualty Insurance Co., N.V. and who placed business with through Chaudhari, an individual whom they shared office space with. It seems evident that there are other key individuals that play a more significant role with respect to these allegations, such as Eulogio Fleites, Chaudhari and perhaps even the Respondent's father, Roberto Padron, who in some way is linked as his signature appears on a bank document pertaining to American Fire and Casualty Insurance Co., N.V. (see Department Exhibit #2G), yet none of them appeared at the Hearing. One can reasonably understand the Respondent's reluctance to divulge more than what is absolutely required since such allegations involve her husband and perhaps her father, and although it is unfortunate that this is the position the Respondent is in, it was the Respondent's choice nonetheless, and as a result the Hearing Officer found the Respondent to be somewhat less than forthcoming during parts of her testimony and at times insincere.

The Record reflects that the Respondent has been cooperative throughout this process. The Respondent points out that she answered all questions from the Department and provided everything that was asked of her, which the Department does not deny. But the Respondent certainly did not go out of her way to offer any more information than what was specifically asked. For example, the Respondent testified that she is familiar with the name "American Fire and Casualty" and that she knows it to be the unauthorized company, "American Fire and

Casualty, N.V.” The Respondent testified that the Department never specifically asked her for documents relating to “American Fire and Casualty, N.V.” but that she was only asked about who had information about “American Fire and Casualty” (R. 227), a response the Hearing Officer finds disingenuous. Additionally, the Respondent testified that she understood “American Fire and Casualty” to refer to the unauthorized surplus lines carrier. The Hearing Officer questions why the Respondent chose not to inform the Department examiners during the investigation that American Fire and Casualty Insurance Co., N.V. was a surplus lines company or why she did not otherwise provide some clarity when given the opportunity to do so.

With respect to the sanction in this matter, the Hearing Officer finds that a lesser sanction of suspension for a period of one year should be imposed against the Respondents with regard to Allegations A, C, E, G and H. Additionally, pursuant to Section 500-70(d) of the Code, the Director *may* in addition to suspension, assess a civil penalty of up to \$10,000.00 for each cause of revocation, with the total amount not to exceed \$100,000.00 (*emphasis added*). The Hearing Officer finds that the \$50,000 civil penalty, though statutorily allowed, is not warranted and that reduced civil penalty of \$5,000.00 is more appropriate given the totality of the evidence presented. The Hearing Officer further finds that pursuant to Section 408 of the Code and 50 Ill. Adm. Code 2402.270, the Director may also assess the costs of this proceeding against the parties. Midwest Litigation Services recorded the testimony taken in this proceeding and charged the Department, \$1043.00 for the Court Reporter’s attendance and a transcript for the proceedings (Hearing Officer Exhibit #13).

### **CONCLUSIONS OF LAW**

Based upon the above-listed Findings of Fact and the entire Record in this matter the Hearing Officer offers the following Conclusion of Law to the Acting Director of Insurance.

- 1) Helen Kim was duly appointed Hearing Officer in this matter pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Director of Insurance has jurisdiction over the subject matter and the parties in this proceeding pursuant to Sections 121, 122, and 500-70 of the Illinois Insurance Code (215 ILCS 5/121, 5/122 and 5/500-70); 50 Ill. Adm. Code 3113.40 and 50 Ill. Adm. Code 3113.50.
- 3) The Director of Insurance, based on the evidence contained in the Record, was within his statutory authority to conclude that the Respondents’ licenses should be revoked with respect to certain allegations as discussed in this Report.

### RECOMMENDATIONS

Based upon the above-listed Findings of Fact, Conclusions of Law and the entire Record in this matter, the Hearing Officer offers the following Recommendations to the Acting Director of Insurance:

- 1) That the Acting Director suspend the Illinois insurance producer license of the Respondent, Gema Fleites, and the business entity license of Professional Insurance Service, Inc., for a period of one year;
- 2) That the Respondent, Gema Fleites, individually and on behalf of Professional Insurance Service, Inc., be assessed a civil penalty of \$5,000.00; and
- 3) That the Respondent, Gema Fleites, individually and on behalf of Professional Insurance Service, Inc., be assessed the costs of the proceedings in the amount of \$1043.00.

Respectfully submitted,

Date: July 8, 2015

  
Helen Kim  
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 8-4, 20<sup>15</sup>, I caused a true and correct copy of the foregoing instrument to be served upon the Attorneys of Record or Parties to the above captioned matter, by the designated means:

Gema Fleites  
and Professional Ins. Services, Inc.  
3525 W. Peterson Ave., Ste. 601  
Chicago, IL 60659

☒ first class mail  
☒ certified mail # 0449  
☐ hand delivery  
☐ electronic mail  
☐ via facsimile

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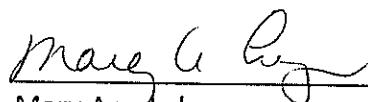
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Mary Ann Lelys  
Administrative Assistant